

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALLEN,
Plaintiff,
v.
S.V.S.P. - P.I.P.,
Defendant.

Case No. 24-cv-03197-PCP

**ORDER REQUIRING PETITIONER
TO FILE A RESPONSE, AND
DENYING MOTION TO PROCEED IN
FORMA PAUPERIS**

Re: Dkt. No. 4

Petitioner Michael Allen, a state prisoner proceeding *pro se*, filed a pleading entitled “petition for writ of habeas corpus.” Dkt. No. 1. Upon review, the pleading concerns the conditions of Mr. Allen’s confinement—specifically, a potential prison transfer—rather than his conviction. *See id.*

Claims regarding conditions of confinement cannot proceed in this habeas action. “Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983.” *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (citation omitted). The Ninth Circuit has held that if the claim “does not lie at the ‘core of habeas corpus,’ it *may not* be brought in habeas corpus but *must* be brought, ‘if at all,’ under § 1983.” *Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (emphases added, citations omitted). *See also Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003) (“habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner’s sentence”).

Here, Mr. Allen’s claim regarding a potential prison transfer should be brought in an action under § 1983. A district court may construe a habeas petition by a prisoner attacking the

conditions of his confinement as a civil rights action under 42 U.S.C. § 1983. *See Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). Before doing so, a district court must advise the prisoner of the consequences of construing a habeas petition as a civil rights complaint and provide an opportunity to withdraw or amend the pleading. *See Nettles*, 830 F.3d at 936.

On or before May 30, 2025, Mr. Allen must file a written response indicating whether he wishes (i) the Court to convert this § 2254 habeas action into one filed under 42 U.S.C. § 1983; or (ii) for the Court to dismiss the remainder of the Petition. If Mr. Allen prefers neither option, he may file a notice of voluntary dismissal as his response to this order.

Before he chooses option (i), to ask the Court to convert this action to a civil rights action under 42 U.S.C. § 1983, Mr. Allen should be aware of the following. The filing fee for a habeas petition is five dollars; for civil rights cases, however, the fee is now \$405.00 (\$350.00 if pauper status is granted) and under the Prisoner Litigation Reform Act the prisoner is required to pay it, even if granted *in forma pauperis* status, by way of deductions from income to the prisoner's trust account. *See* 28 U.S.C. § 1915(b). A prisoner who might be willing to pay the filing fee for a habeas petition might feel otherwise about a civil rights complaint for which the \$405.00 fee would be deducted from income to his prisoner account. Also, a civil rights complaint which is dismissed as malicious, frivolous, or for failure to state a claim would count as a "strike" under 28 U.S.C. § 1915(g), which is not true for habeas cases. When an inmate accrues three "strikes," he is barred from *in forma pauperis* status for all future cases.

If Mr. Allen chooses option (i), the Court then will set a deadline for him to file a complaint under 42 U.S.C. § 1983, and to file a complete application to proceed in forma pauperis (or pay the full filing fee). He may also move for appointment of pro bono counsel at that time.

I. CONCLUSION


On or before **May 30, 2025**, Mr. Allen must file a written response indicating whether he wishes (i) the Court to convert this § 2254 habeas action into one filed under 42 U.S.C. § 1983; or (ii) for the Court to dismiss the remainder of the Petition. **Failure to file a response in accordance with this order will result in a finding that further leave to amend would be futile, and this action will be dismissed.** This dismissal would be without prejudice.

1 Mr. Allen's *in forma pauperis* application is **DENIED** because the initial assessment
2 would exceed the filing fee for a habeas action. *See* 28 U.S.C. § 1915(b)(1) (requiring a court to
3 assess an initial filing fee of 20 percent of a prisoner's average monthly deposits or monthly
4 balance, whichever is greater). If Mr. Allen elects to have this lawsuit converted to a civil rights
5 action, he may file a new *in forma pauperis* application as to the higher filing fee.

6 It is Mr. Allen's responsibility to prosecute this case. He must keep the Court informed of
7 any change of address by filing a separate paper with the Clerk headed "Notice of Change of
8 Address," and must comply with the Court's orders in a timely fashion. Failure to do so will result
9 in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure
10 41(b).

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12 **IT IS SO ORDERED.**

13 Dated: March 31, 2025

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16 P. Casey Pitts
17 United States District Judge
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